

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES

v.

DAVID HARVILLE

Case No. 1:20-cr-10263-PBS-2

**DEFENDANT DAVID HARVILLE’S MOTION TO DISMISS THE INDICTMENT
AND REQUEST FOR HEARING**

NOW COMES defendant David Harville (hereinafter, “Harville”) in the above-captioned matter pursuant to Fed. R. Crim. P. 7(c)(1), Fed. R. Crim. P. 12(b)(3)(A)(i), Fed. R. Crim. P. 12(b)(3)(B)(i)-(ii), Fed. R. Crim. P. 18, the Fifth Amendment and Sixth Amendment to the United States Constitution, and respectfully moves this Honorable Court to dismiss the Indictment (Document No. 33) .

In support of his within motion, Harville submits the following:

1. The Indictment is facially defective on “duplicity” grounds as to Count 4, Count 5, Count 8 and Count 9.
2. The Indictment is defective on “multiplicity” grounds as to Count 4, Count 5, Count 8 and Count 9
3. The Indictment fails to state a “course of conduct” defined by 18 U.S.C. § 2266(2) under Count 8 and Count 9.
4. The Indictment fails to state the nexus between a private sector person allegedly misled, and whether the information would be relayed to a federal official under 18 U.S.C. § 1512(b)(3) as to Count 12.

5. The Indictment does not state the statutory requirement for a matter within the jurisdiction of the United States under 18 U.S.C. § 1519 as to Count 15.

6. Unspecified contents of a cell phone are not *per se* “records, documents, and tangible objects” under 18 U.S.C. § 1519.

7. Count 12 and Count 15 concern charged conduct alleged to have occurred outside of the District of Massachusetts, and therefore, Massachusetts is not the proper venue for said counts.

WHEREFORE, based on the reasons set forth above and the arguments advanced in the supporting memorandum filed concurrently herewith, defendant David Harville respectfully requests that this Honorable Court grant his motion to dismiss.

REQUEST FOR ORAL ARGUMENT

Defendant David Harville respectfully requests that this Honorable Court hear oral argument by counsel for the parties on the within motion.

Respectfully submitted,

DEFENDANT DAVID HARVILLE

By his attorneys,

Dated: October 29, 2021

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that on October 29, 2021 this document was electronically filed with the Clerk of Court for the United States District Court for the District of Massachusetts using the CM/ECF system, which will send a notice of electronic filing (NEF) to all registered participants in the above-captioned action.

/s/ Daniel K. Gelb
Daniel K. Gelb, Esquire